No. 89-674

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *et al.*,
Cross-Respondents,

v.

THE LONG ISLAND RAILROAD COMPANY, *et al.*,
Cross-Petitioners.

On Conditional Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Cross-respondents, the International Association of Machinists and Aerospace Workers, AFL-CIO, *et al.* (the "Unions"), oppose the conditional cross-petition filed by the Long Island Railroad Company and Metro-North Commuter Railroad Company (the "Railroads") for a writ of *certiorari* to review the decision of the United States Court of Appeals for the Second Circuit in *Long Island R.R. Co. v. International Association of Machinists*, 874 F.2d 901 (2d Cir. 1989).

REASONS FOR DENYING THE WRIT

1. The Railroads' cross-petition serves one useful—albeit perhaps unintended—purpose: to confirm that the underlying *certiorari* petition in *International Association of Machinists v. Long Island R.R. Co.*, No. 89-427 (filed Sept. 13, 1989), should be granted. As the cross-petition recognizes, the questions raised in the underlying petition regarding sympathy strikes in industries covered by the Railway Labor Act ("RLA") are of such importance that this Court should "provide guidance concerning the rights and obligations of carriers and their employees." Cross-Pet. 5.[1] The lower court decisions we review at pages 8-13 of the underlying petition amply demonstrate the need for such guidance on the question of whether a carrier can invoke existing collective bargaining agreements to secure an injunction precluding a sympathy strike.

2. The additional—and wholly distinct—sympathy strike question tendered by the cross-petition was not addressed by the court below, has never been addressed by any court of appeals to our knowledge, and rests on a premise rejected by this Court in *Pittsburgh & Lake Erie R.R. Co. v. Railway Labor Executives' Association*, 109 S.Ct. 2584 (1989). In contrast to the questions presented by the underlying petition—which are ripe for decision, have generated circuit conflicts and are open in this Court—the additional question presented by the cross-petition does not warrant this Court's plenary review.

The Railroads contend that in a situation in which a sympathy strike is not enjoinable as an alleged breach of contract, unionized employees can only honor a picket line after their union has first invoked and exhausted the RLA's *major dispute* procedures. Cross-Pet. 5, 10. Through a breathtaking expansion of § 2, First and § 5, First of the RLA, the Railroads would have it that any

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[1] References to pages in the Railroads' cross-petition in No. 89-674 are designated as "Cross-Pet. ——."

disagreement between a union and a carrier that is not a "minor" dispute to be settled before an adjustment board automatically becomes subject to the RLA's almost endless resolution procedures for major disputes.

The court below did not address, much less decide, any question concerning the applicability of the RLA's major dispute provisions in sympathy strike situations. Nor has any other court of appeals ever held that those procedures apply in a case like this. Consequently, the additional question posed by the cross-petition is simply not ready for consideration in this Court. Nor is it surprising that the Railroads cannot cite any precedent for their theory. At bottom their argument rests on the premise that the RLA's major dispute resolution procedures must be exhausted even for issues that do not "relate to 'the formation of collective agreements or efforts to secure [or change] them.'" Cross-Pet. 6, quoting *Elgin, Joliet & Eastern Ry. v. Burley*, 325 U.S. 711, 723 (1945). This Court's decision in *Pittsburgh & Lake Erie R.R. Co. v. Railway Labor Executives' Association*, 109 S.Ct. 2584 (1989), rejects that premise.

In *Pittsburgh & Lake Erie*, this Court determined that a carrier has *no* duty to initiate and exhaust the Act's major dispute procedures when its action—there a decision to go out of business—does not constitute a change in agreements affecting rates of pay, rules, or working conditions. And in this case, as in *Pittsburgh & Lake Erie*, there is no basis to believe that the challenged action "would violate or require changing any of the provisions of the unions' written contracts with [the carriers]." *Id.* at 2593.

Ignoring *Pittsburgh & Lake Erie*, the Railroads suggest that this Court's decision in *Detroit & Toledo Shore Line R.R. Co. v. United Transportation Union*, 396 U.S. 142, 152 (1969), establishes the RLA as "'an integrated, harmonious scheme' for the peaceful resolution of *all* disputes between carriers and their employees." Cross-Pet. 6

(emphasis in original). *Detroit & Toledo Shore Line* was, however, decided in the context of a prototypical major dispute in which a proposal to change an existing collective bargaining agreement was duly made. In *Pittsburgh & Lake Erie* this Court rejected the proposition that the *Shore Line* decision could be expanded beyond that context to cover each and every disagreement between a carrier and a union that disturbs a generalized "status quo." *See Pittsburgh & Lake Erie*, 109 S.Ct. at 2594.[2]

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[2] Neither of the pre-*Pittsburgh & Lake Erie* lower court decisions cited by the Railroads does anything to advance the cross-petition.

The Railroads quote *CSX Transportation, Inc. v. United Transportation Union*, 879 F.2d 990, 996 n.4 (2d Cir. 1989), in support of their contention that § 5, First, of the RLA " 'adopts a comprehensive scheme which addresses *all* disputes between RLA carriers and employee representatives.' " Cross-Pet. 8. However, in affirming that a *minor dispute* was presented by a carrier's sale of a railroad line, the *CSX Transportation* court never addressed whether the carrier was required to exhaust the Act's major dispute procedures. Its tentative conjecture in *dicta* that the RLA "would . . . appear" to address "*all* disputes" cannot, for the reasons given in the text, survive this Court's *Pittsburgh & Lake Erie* decision.

Nor does *Summit Airlines, Inc. v. Teamsters Local Union No. 295*, 628 F.2d 787 (2d Cir. 1980), hold that "*all* disputes" are subject to major dispute procedures. That decision stands for the wholly unexceptional proposition that all disputes over recognition of the union are referable to the mediation board. *Id.* at 790-91.

CONCLUSION

For the foregoing reasons, the cross-respondent Unions respectfully request that the Court deny the conditional cross-petition in this case even though the petition in No. 89-427 is granted.

Respectfully submitted,

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Dated: November 29, 1989